

**December 18, 1995**

**P.S. Protest No. 95-43**

**EARTH MANAGEMENT INC.**

**Solicitation No. 072368-95-A-0502**

**DIGEST**

Protest against contracting officer's determination of offeror's responsibility to perform vehicle washing contract is dismissed. Protester lacked standing because it was not next in line for award, and the protest did not raise an issue which would allow review of that determination.

**DECISION**

Earth Management Inc. (EMI) protests the award of a contract to Diana's Mobile Wash (DMW) under vehicle washing solicitation 072368-95-A-0502. The Denver Purchasing and Materials Service Center issued solicitation A-0502 seeking offers to wash 989 postal vehicles at eighteen postal facilities in Phoenix, AZ. The statement of work required that the contractor "wash vehicles using a method that is in conformance with applicable environmental laws," and that it "capture and not allow any debris and water runoff from the washing process to enter the storm water drains."

Section M of the solicitation stated that award would be made "to the responsible offeror(s) whose proposal(s) will be most advantageous to the Postal Service, considering cost or price and other factors specified elsewhere in th[e] solicitation," and stated that "[h]ours of service, of both the Postal Service facility and the offeror, may be taken into account in arriving at the best overall value." The solicitation contained no additional evaluation criteria. The contracting officer's statement notes that award was made on the basis of price.

Attachment 3 to the solicitation sought "Additional Vendor Data," including a description of the offeror's method of washing vehicles and references for the offeror.

Five offers were received. DMW's offer was the lowest, at \$3.75 per vehicle per wash, an annual contract price of \$192,855. The other offers were all significantly higher, beginning at \$7.00 per wash. EMI's offer was the third lowest offer received.

Its offer indicated that DMW was a partnership of which Diana Shatkus and Lee Fry were the co-owners. Two references were listed on Attachment 3. One was Shatkus Steam Cleaning Service, with Donald and Trish Shatkus as contacts; the other was Lee's Automotive Service, for which the contact was Lee Fry. Diana Shatkus is the daughter of Donald Shatkus.

The solicitation had stated that a demonstration of the offeror's car washing technique would precede any award. DMW's demonstration took place at the Phoenix Vehicle Maintenance Facility (VMF). The demonstration identified some problems, of which the most notable was the overloading of the VMF's electrical circuits. The concerns occasioned by the demonstration were discussed with the offeror, who resolved the matters to the contracting officer's satisfaction. (For example, the offeror undertook to provide a portable electrical generator to power the equipment.) On the basis of those discussions, the contracting officer found DMW to be responsible and made award to it on September 18, with service to begin on September 29. The unsuccessful offerors were notified of the award by letters dated September 18.

EMI's protest was received by this office on October 2. Noting its experience with environmental waste water and treatment systems as well as its current washing contract for postal vehicles in Tucson, AZ, EMI contends that DMW cannot comply with the environmental requirements or the Service Contract Act wage requirements of the contract for the offered price. Further, the protester contends that the contracting officer failed to make the required determination of DMW's responsibility, and concludes, based on its own inquiries, that no proper affirmative determination could be made. The protest goes into substantial detail in this respect; that detail is omitted here as unnecessary given the conclusions reached below.

The contracting officer's statement in response to the protest describes the course of the procurement, as set out above, and contends that DMW was properly determined to be a responsible contractor on the basis of the conduct of the washing demonstration and its successful resolution of the concerns which the demonstration raised.

In replying to the protester's specific concerns, the contracting officer referred to a copy of an August 24, 1994, letter from the Arizona Department of Environmental Quality (ADEQ) supplied by DMW. The contracting officer's reference misstates the date of the letter as August 25, 1995. The letter, which as furnished included DMW's name as the addressee, has as its subject "Mobile Vehicle Wash Permit Request, Chandler Post Office," and the salutation reads "Dear Mr. Shatkus." It concludes that under a number of specified circumstances, "the proposed operation [in Chandler] will not be considered a discharging facility and an Aquifer Protection Permit (APP) [will not be] required." The contracting officer's statement appears to rely on the letter and the fact that water usage will not exceed 2,000 gallons per day per site for the conclusion that DMW will not require an APP for its Phoenix operation.

The protester filed supplemental comments challenging in numerous respects the

adequacy of the contracting officer's statement in support of the determination of responsibility. One point which it raises is the miscitation of the date of the ADEQ letter, about which it notes the inconsistency of that date with the contention that DMW is a new entity. We asked the contracting officer to supplement his statement to address that issue.

The contracting officer's response asserts that the 1995 date was supplied in error, and that no misdirection was intended. It further notes that the original letter was addressed not to DMW, but to Shatkus Steam Cleaning and that Diana Shatkus had written the letter for Shatkus Steam Cleaning to which the ADEQ letter replied. The response includes a letter from Diana Shatkus which notes that she "has not cut ties with Shatkus Steam Cleaning Service, [and] therefore [is] a part of [that] business also." She states that she changed the name of the addressee on the ADEQ letter "[t]o avoid confusion," but, "as you can see by the date and location, we did not want anyone to be misled."

## **DISCUSSION**

There is an initial question of EMI's standing to question the award to DMW. As previous decisions of this office have noted, "offerors lack standing to protest an award if they are not in line to receive the award if their protest is successful. While such circumstances are most commonly evident in the case of advertised contracts, in which all bids are exposed and the rank order of the bidders is known at the time of bid opening, the rule also is applicable to negotiated procurements such as this, where the protester may be unaware of its relative standing *vis a vis* the successful offeror." *C E W Manufacturing Co., Inc.*, P.S. Protest No. 93-08, June 8, 1993 (citation omitted). Inasmuch as EMI was not next in line for award and has failed to raise any issue about the acceptability of the intervening offeror, it lacks standing to protest.

Further, EMI's protest is a challenge to the contracting officer's affirmative determination of DMW's responsibility. The extent of this office's review of such determinations is extremely limited. "We do not review such allegations in the absence of fraud or bad faith on the part of the contracting officer or a failure to apply definitive responsibility criteria." *Automated Conversion Technologies, Inc.*, P.S. Protest No. 92-63, September 25, 1992. Here, the solicitation contained no definitive responsibility criteria, and there are no allegations of fraud or bad faith on the contracting officer's part. The issue which most closely approaches reviewability involves the change made to the ADEQ letter by DMW and the significance, if any, of that change to the determination of its responsibility. We conclude that the change would not be of sufficient significance to allow us to overturn the contracting officer's affirmative determination of responsibility, since the contracting officer can be assumed to know the identity of the contractor providing vehicle washing services in Chandler, AZ, the identity of the contractor is not relevant to the conclusions stated in the ADEQ letter, and the contracting officer's conclusion that the APP will not be required was supported by a sufficient alternative ground.

The protest is dismissed.

William J. Jones  
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## Contract Protests and Policies